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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. LUIS GABRIEL LOPEZ, Defendant and Appellant.	E064279 (Super.Ct.No. RIF1404655) OPINION

APPEAL from the Superior Court of Riverside County. Edward D. Webster, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Law Offices of Murray D. Hilts and Michael J. Codner for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Teresa Torreblanca and Samantha L. Begovich, Deputy Attorneys General, for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY[1]

On October 22, 2014, defendant and appellant Luis Gabriel Lopez ran and jumped a fence upon the arrival of law enforcement to serve a narcotic search warrant at a home on Marie Road in Riverside County. Defendant's cell phone and his black pouch containing three grams of methamphetamine were discarded by him as he ran, but seized near him upon his arrest. An active marijuana grow operation along with processed and packaged marijuana, several loaded firearms, ammunition, and night visions goggles were seized. Four other accomplices were arrested. One codefendant, Victor Riley, told police that defendant was in charge of the marijuana grow operation and that defendant paid Riley and his girlfriend about $1,000 with the promise of two new cars for their "work on the property."

"Due to the amount of suspected methamphetamine located next to [defendant's] cellular phone," a police officer opined that defendant was in possession of an amount of suspected methamphetamine consistent with that maintained for the purpose of sales.

On October 24, 2014, a felony complaint charged defendant and three codefendants with marijuana cultivation while armed under Health and Safety Code section 11358 and Penal Code section 12022, subdivision (d) (count 1); possession of marijuana for sale while armed under Health and Safety Code section 11359 and Penal Code section 12022, subdivision (d) (count 2); and as to defendant only, possession of

[1] Because defendant pled guilty, the factual background is taken from the sheriff's report.

methamphetamine under Health and Safety Code section 11377, subdivision (a). On December 17, 2014, defendant pled not guilty.

On January 29, 2015, defendant pled guilty to count 1 as a felony. The remaining counts and allegations were dismissed pursuant to the terms of the plea agreement. Defendant requested immediate sentencing, waived a probation report, and was granted formal probation. As a term of the probation, the trial court ordered defendant to serve 60 days in custody, with 58 days to be served in the community on "ankle bracelet" monitoring. Defendant did not complete the electronic monitoring portion of his sentence because he was arrested again.

On July 3, 2015, defense counsel moved to withdraw defendant's guilty plea. The trial court denied defendant's motion.

On August 19, 2015, defendant filed a notice of appeal and requested a certificate of probable cause. The trial court granted defendant's request on August 20, 2015.

DISCUSSION

Defendant contends that the trial court abused its discretion when it denied his motion to vacate his conviction and withdraw his plea under section 1016.5 because (1) he had valid defenses to the charges against him; (2) he was not adequately advised of the immigration consequences of the plea; and (3) defense counsel failed to inform defendant about his immigration consequences and defenses before he pled guilty.

A. VALID DEFENSES FORFEITED BY DEFENDANT

Defendant contends that the trial court erred in denying his motion to vacate his plea because "[t]he superior court arbitrarily failed to identify the valid defenses forfeited by defendant in pleading guilty which should have served as a necessary precursor to granting of relief under PC § 1018." The People contend that this claim must be dismissed because defendant failed to obtain a certificate of probable cause. The record, however, shows that defendant's request for a certificate of probable cause was granted by the trial court.

In order to withdraw a guilty plea, a defendant must show by clear and convincing evidence that his plea was not the product of his free judgment, which can be proven with evidence that the defendant was mistaken, ignorant, or that any other factor overcame his free judgment. (*People v. Cruz* (1974) 12 Cal.3d 562, 566.) An appellate court will not reverse a denial of a motion to withdraw a guilty plea unless an abuse of discretion is clearly demonstrated. (*People v. Holmes* (2004) 32 Cal.4th 432, 442-443.) If two conflicting inferences may be drawn from the evidence, the appellate court must resolve the conflict in favor of the trial court's ruling. (*People v. Harvey* (1984) 151 Cal.App.3d 660, 667.) We review the trial court's ruling on the motion for abuse of discretion and adopt the trial court's factual findings if substantial evidence supports them. (*People v. Wharton* (1991) 53 Cal.3d 522, 585.) Abuse of discretion is found only if the trial court has exercised its discretion in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice. (*People v. Shaw* (1998) 64 Cal.App.4th 492, 496.)

In this case, defendant claims that defense counsel never went over the arrest report with defendant. Defendant, therefore, was not aware that there was a lack of direct evidence against him, conflicting witness testimony, and destroyed evidence. Defendant states that "[t]he state of evidence above, or lack thereof, indicated clearly that all the prosecution had against [defendant] was his **presence** on the property at such time." Therefore, defendant argues that because the People have insufficient evidence against defendant, he "forfeited substantial trial rights / defenses in pleading guilty induced by faulty immigration advisals." We disagree.

At the plea proceedings, the court asked defendant if he had "enough time to read the form with the assistance of the Spanish interpreter," to which defendant responded "Yes." Defendant also stated that he had enough time to talk to his attorney about all the rights on the form, and that he had no questions about all the rights and consequences of his plea. On his felony plea form, defendant placed his initials next to the following: "I have had adequate time to discuss with my attorney . . . any defenses I may have to the charges against me." Defendant's claim, that he was unaware of his defenses to the charges against him, are contradicted in the record by his repeated statements that he understood his rights and the charges against him, as well as his statements that he had sufficient time to discuss his case and possible defenses with his attorney. When "conflicting inferences may be drawn from the evidence," we adopt the inference that supports the trial court's ruling. (*People v. Hunt* (1985) 174 Cal.App.3d 95, 104.) When the evidence itself is conflicting, "the trial court's ruling will not be disturbed." (*People v. Grgurevich* (1957) 153 Cal.App.2d 806, 811.)

Therefore, we conclude that the trial court did not abuse its discretion by denying defendant's motion to withdraw his plea.

B. ADVISEMENT OF IMMIGRATON CONSEQUENCES

Defendant contends the court erred in denying his motion to withdraw his guilty plea because "the record was clear that defendant was improperly advised of the immigration consequences despite the plea agreement."

"Before accepting a plea of guilty or no contest, a trial court is statutorily required to advise a defendant that if the defendant is not a citizen of this country, the plea could result in deportation, exclusion from the United States, or denial of naturalization. (§ 1016.5, subd. (a).)" (*People v. Arriaga* (2014) 58 Cal.4th 950, 955.) If the court fails to give the admonition required by subdivision (a), upon the defendant's motion, it must vacate the judgment and allow the defendant to withdraw his or her plea and enter a plea of not guilty if the defendant can show that the conviction or offense to which he or she pleaded guilty or nolo contendere might result in his or her deportation, exclusion from admission to the United States, or in denial of naturalization. (§ 1016.5, subd. (b).)

"To prevail on a motion to vacate under section 1016.5, a defendant must establish that (1) he or she was not properly advised of the immigration consequences as provided by the statute; (2) there exists, at the time of the motion, more than a remote possibility that the conviction will have one or more of the specified adverse immigration consequences; and (3) he or she was prejudiced by the nonadvisement." (*People v. Totari* (2002) 28 Cal.4th 876, 884; *People v. Superior Court* (*Zamudio*) (2000) 23 Cal.4th 183, 192 (*Zamudio*).) The purpose of section 1016.5 is to ensure that a defendant has

both actual knowledge of the possible adverse immigration consequences of a guilty or no contest plea and a chance to make an intelligent choice whether to plead guilty or no contest. (*Zamudio*, at pp. 193-194.)

A trial court's denial of a motion to vacate under section 1016.5 is reviewed for abuse of discretion. (*Zamudio*, *supra*, 23 Cal.4th at p. 192.) The court deciding whether the defendant has made a sufficient showing under section 1016.5 "is the trier of fact and . . . the judge of the credibility of the witnesses or affiants. Consequently, it must resolve conflicting factual questions and draw the resulting inferences." (*People v. Quesada* (1991) 230 Cal.App.3d 525, 533 (*Quesada*), superseded by statute on other grounds as stated in *People v. Totari* (2003) 111 Cal.App.4th 1202, 1206-1207, fn. 5.) To the extent the court's denial is based on statutory interpretation, it is an issue of law which we review de novo. (*People v. Akhile* (2008) 167 Cal.App.4th 558, 562-563.)

On January 29, 2015, defendant pled guilty to marijuana cultivation in count 1. The remaining charges and firearm allegations were dismissed. Defendant requested immediate sentencing, waived a probation report, and was granted formal probation. As a term of probation, the trial court ordered defendant to serve 58 days in the community on an "ankle bracelet" program.

As part of his plea bargain, defendant signed a plea waiver form stating that he understood his rights and initialed a box indicating that he specifically received and understood the advisement:

"If I am not a citizen of the United States, I understand that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States."

Defendant also indicated in his change of plea form that, prior to entering into his plea, he read and understood the entire change of plea document and had a full opportunity to discuss the consequences of his plea with his attorney, that he had no further questions of court or counsel with regards to his plea, and that his initials next to the advisements in the plea form meant that he read, understood and agreed with what was stated.

Defense counsel also signed the plea form that stated: "I am the attorney for the defendant. I am satisfied that (1) the defendant understands his/her constitutional rights and understand[s] that a guilty plea would be a waiver of these rights; (2) the defendant has had an adequate opportunity to discuss his/her case with me, including any defenses he/she may have to the charges; and (3) the defendant understands the consequences of his/her guilty plea."

A certified Spanish interpreter certified that she interpreted the entire form to defendant and that he stated he fully understood the contents of the form prior to signing the plea agreement.

Defendant also initialed by and signed under the section that provided, in pertinent part: "I have read and understand this entire document. I waive and give up all of the rights that I have initialed. I accept this Plea Agreement."

At the change of plea hearing on January 29, 2015, the following exchanged occurred:

"THE COURT: [Defendant], I have here a felony plea form. Are these your initials and signature on this form?

"DEFENDANT []: Yes.

"THE COURT: Did you have enough time to read the form with the assistance of the Spanish interpreter?

"DEFENDANT []: Yes.

"THE COURT: Did you have enough time to talk to your lawyer about all the rights on the form?

"DEFENDANT []: Yes.

"THE COURT: Do you have any questions about all the rights or consequences of your plea in this case?

"DEFENDANT []: No.

"THE COURT: And you wish to give up all these rights in this case so you can plead guilty and take advantage of the DA's offer

"DEFENDANT []: Yes."

Thereafter, defendant pled guilty to count 1 and the trial court found a factual basis for his guilty plea, and found "it to be voluntary, knowing and intelligent and [defendant] understands the nature of the consequences of [his] plea as well."

The reporter's transcript of the plea hearing is clear that the court did not provide its own, separate admonition that defendant would be deported as a result of the plea. It was simply presumed that the appropriate admonitions and advisements had been given by defendant's trial counsel.

In *People v. Arriaga*, *supra*, 58 Cal.4th at page 963, the California Supreme Court held that where the record does not reflect whether the court gave the section 1016.5 advisements at the time of the plea, the burden shifts to the People. The "presumption of nonadvisement established by section 1016.5's subdivision (b) is controlling unless and until the prosecution rebuts it by proving it is more likely than not that the defendant *was* properly advised." (*Arriaga*, at p. 963.) The question then becomes whether "the prosecution" carried "its burden of proving that defendant received the proper advisements." (*Ibid*.)

In this case, in its opposition to defendant's motion to withdraw his guilty plea, the People attempted to meet their burden by relying on defendant's signed guilty plea form under penalty of perjury with the advice of his counsel, defendant's statements at the plea hearing, and the minute order of the plea hearing, as summarized in detail above. "As shown by Exhibits 1 and 2, defendant was advised of his constitutional rights, the consequences of his plea, the nature of the charges against him. The record also shows the judge inquired of defendant and made a finding that he knew and understood the consequences of his plea. (Exhibit 1, 2.) Those consequences were clearly itemized on the Felony Plea Form[.] (Exhibit 1.) Defendant further acknowledged that he knew and understood those consequences—specifically the immigration consequences—when he

wrote his initials next to Paragraph #4 under the 'Consequences of Plea Heading,' which advises exactly what is required under Penal Code section 1016.5, subdivision (a). Defendant solidified his understanding by signing his name and declaring under penalty of perjury that he read and understood every statement that he initialed. His attorney, Chad Lewin, further[] attested that he explained the consequences of the plea and that he was satisfied defendant understood them, and the interpreter confirmed this conclusion."[2]

In *People v. Ramirez* (1999) 71 Cal.App.4th 519 (*Ramirez*), the court concluded section 1016.5 does not require a trial court to orally advise a defendant of the possible immigration consequences of a guilty plea; the written change of plea form signed by the defendant satisfied the section 1016.5 requirements. (*Ramirez*, at pp. 521-523.) "[T]here is no language [in section 1016.5] which states the advisements must be verbal, only that they must appear on the record and must be given by the court." (*Id*. at p. 521; see also *People v. Araujo* (2016) 243 Cal.App.4th 759, 762 [the immigration "advisement need not be in the exact language of section 1016.5 and can be in writing. Substantial compliance is all that is required")

Citing *In re Ibarra* (1983) 34 Cal.3d 277, the *Ramirez* court noted that the "Supreme Court has held a validly executed waiver form is a proper substitute for verbal admonishment by the trial court." (*Ramirez, supra,* 71 Cal.App.4th at p. 521.) Although the court in *Ibarra* expressly addressed the constitutionally mandated advisements

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[2] On October 20, 2016, on our own motion, we augmented the record by attaching a copy of the People's opposition to the motion to withdraw since the document was missing from the record on appeal.

required under *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122, *Ramirez* concluded its reasoning was equally applicable to legislatively mandated advisements. (*Ramirez*, at pp. 521-522.) *Ramirez* also stated, "As the Third Appellate District noted in . . . *Quesada*[, *supra*,] 230 Cal.App.3d 525, the legislative purpose of section 1016.5 is to ensure a defendant is advised of the immigration consequences of his plea and given an opportunity to consider them. So long as the advisements are given, the language of the advisements appears in the record for appellate consideration of their adequacy, and the trial court satisfies itself that the defendant understood the advisements and had an opportunity to discuss the consequences with counsel, the legislative purpose of section 1016.5 is met. [Citation.] We agree with the analysis in *Quesada*." (*Id*. at p. 522.)

Because the record contained a copy of the change of plea form signed by the defendant, which warned of all three possible immigration consequences, and showed that the trial court asked the defendant whether he reviewed the form with his attorney and understood it, the *Ramirez* court affirmed the trial court's denial of the defendant's section 1016.5 motion. (*Ramirez*, *supra*, 71 Cal.App.4th at p. 523.)

According to *Ramirez*, neither the language nor the purpose of section 1016.5 requires a trial court to orally advise a defendant of the possible immigration consequences before accepting a guilty plea. Rather, a written change of plea form describing those possible immigration consequences may, if duly signed and understood by the defendant after having an opportunity to review it and ask questions of his counsel, satisfy the section 1016.5 requirements. As with the *Boykin-Tahl* rule discussed in

Ibarra, the underlying purpose of section 1016.5 is to ensure the defendant has actual knowledge of the possible immigration consequences of a guilty plea and has had an opportunity to make an intelligent choice to plead guilty. (*In re Ibarra*, *supra*, 34 Cal.3d at p. 285; *Ramirez*, *supra*, 71 Cal.App.4th at p. 522; *Quesada*, *supra*, 230 Cal.App.3d at pp. 535-536; *People v. Gutierrez* (2003) 106 Cal.App.4th 169, 175.) A ritual oral recitation by a trial court of the possible immigration consequences of a guilty plea adds little to a defendant's actual knowledge of those consequences if the defendant has previously read and understood the written form describing those possible consequences and discussed the form's advisements with his or her counsel. (Cf. *Ibarra*, at p. 286.)

In sum, in this case, defendant initialed the plea form indicating that if he was not a citizen of the United States, he understood "that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." Before taking defendant's plea, the trial court confirmed that defendant had read and understood the provisions of the plea form before signing and initialing it. As previously explained, the trial court was not required to provide a further verbal advisement; "a validly executed waiver form is a proper substitute for verbal admonishment by the trial court." (*Ramirez*, *supra*, 71 Cal.App.4th at p. 521.) Thus, the evidence at the hearing established defendant was properly advised in compliance with section 1016.5, and the trial court's ruling was not an abuse of discretion.

Even if we assume, for the sake of argument, that the court erred in failing to orally advise defendant of the immigration consequences pursuant to section 1016.5, defendant cannot establish prejudice.

"On the question of prejudice, defendant must show that it is reasonably probable he would not have pleaded guilty or nolo contendere if properly advised." (*People v. Totari*, *supra*, 28 Cal.4th at p. 884.) This question is a factual one. (*Zamudio*, *supra*, 23 Cal.4th at p. 210.) Accordingly, on review we apply the substantial evidence rule. (*Quesada*, *supra*, 230 Cal.App.3d at p. 533.) Under this rule, we do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *People v. Johnson* (1980) 26 Cal.3d 557, 578.) Rather, "we 'must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. . . . If the circumstances reasonably justify the trial court's findings, an appellate court cannot reverse merely because the circumstances might also be reasonably reconciled with a contrary finding.'" (*Quesada*, at p. 533.) "Whether defendant knew of the potential immigration consequences, despite inadequate advisements at the time of the plea, may be a significant factor in determining prejudice . . . ." (*Totari*, at p. 884.)

In his motion, defendant contended that he was prejudiced by the court's failure to comply with section 1016.5 because he "would have never agreed to plead guilty if [he] had known it would subject [him] to removal." Defendant went on to state: "I want to reiterate that had I been aware of the immigration consequences of my guilty plea, I never

would have plead guilty and would have insisted on taking the case to trial as was my right. This is true considering the lack of evidence against me and that I did not participate in the criminal scheme going on."

There is no merit to this contention. As indicated above, defendant executed the plea waiver form in which he acknowledged the immigration consequences of his plea. He also verbally indicated to the court at the plea hearing that he understood his rights; that he had sufficient time to review his rights, the evidence, and any possible defenses with his attorney; that he did not need any more time; and that he had no questions. From these facts it is reasonably inferable that defendant understood the consequences of his plea. The court reasonably could have concluded that defendant was still aware of these consequences when he entered his plea; therefore it was not reasonably probable that defendant would not have pled guilty to the charges had the court, at the time defendant entered his plea, orally advised defendant of the immigration consequences pursuant to section 1016.5 and inquired further of defendant.

As there was clear evidence at the plea hearing and in the plea form that defendant entered into his plea agreement with an informed understanding of its immigration consequences, and because defendant only offered his unsupported, self-serving declaration in support of the motion to vacate, we conclude that the trial court acted in a reasoned and reasonable manner in denying the motion.

C. ALLEGED IMPROPER ADVISEMENT FROM DEFENSE COUNSEL

Defendant argues that because his attorney never advised him of certain immigration consequences of his plea, his counsel rendered ineffective assistance of counsel (IAC) and that he is entitled to relief as a result of trial counsel's errors. The People argue that there is no evidence, other than his self-serving statements, that he received IAC. We agree.

Defendant relies on *Padilla v. Kentucky* (2010) 559 U.S. 356 (*Padilla*). In *Padilla*, the United States Supreme Court held that an attorney's misadvice or failure to advise about the potential immigration consequences of a plea may constitute ineffective assistance. There, the defendant, a Honduran citizen, pled guilty to transporting a large quantity of marijuana after his attorney erroneously advised that he need not worry about the immigration consequences of his plea. (*Id*. at p. 359.) When *Padilla* sought postconviction relief, the Kentucky Supreme Court held the Sixth Amendment's guarantee of effective assistance of counsel did not protect a criminal defendant from erroneous advice about the collateral consequences of a conviction. (*Padilla*, at pp. 359-360.) The Unites States Supreme Court disagreed, holding that constitutionally competent counsel must inform his or her client whether a plea carries a risk of deportation. (*Id*. at pp. 360, 374.) *Padilla*'s holding was not limited to affirmative misadvice; instead, the high court reasoned that an attorney has an affirmative duty to advise a client when the client faces a risk of deportation. (*Id*. at pp. 370-371, 374.)

This case is readily distinguishable from Padilla, *supra*, 559 U.S. 356. Here, there was no evidence of misadvice about defendant's immigration consequences. In fact, in

defendant's change of plea statement, defense counsel affirmed: "[T]he defendant has had an adequate opportunity to discuss his/her case with me, including any defenses he/she may have to the charges; and . . . the defendant understands the consequences of his/her guilty plea." This statement established that he researched and discussed/dismissed potential defense to defendant's case. Considering the fact that defendant faced a maximum exposure of three years in prison, and what appeared to be a very limited defense, his counsel's recommendation that defendant accept the prosecutor's plea offer was reasonable. Moreover, the plea form clearly demonstrated that defendant was aware of the consequences of his plea. And, there is nothing in the record to indicate that his attorney "erroneously advised" defendant that he did not need to worry about the immigration consequences of his plea, as defense counsel did in *Padilla*. (*Padilla*, at p. 359.)

Moreover, defendant contends that his counsel rendered IAC because defendant was lured into pleading guilty by a promise of getting out of custody soon. The record, however provides no evidence to suggest that defendant was pressured to plead guilty or to accept the People's offer. Fear of receiving a longer sentence as motivation for a plea of guilty is not a valid ground for later withdrawal of that plea. (*People v. Powers* (1984) 151 Cal.App.3d 905, 917.)

Because the record demonstrates that defendant was informed on the change of plea form of the immigrations consequences of his plea, and that his counsel discussed the immigration consequences with defendant, defendant's self-serving and

uncorroborated claim that he was not properly advised was insufficient to demonstrate good cause to withdraw his plea.

DISPOSITION

The trial court's denial of defendant's motion to withdraw his plea under section 1018 is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.